IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WP(C).No. 30560 of 2005(K)

PETITIONER:

PARVATHY ANTHARJANAM, AGED 72 YEARS,
W/O.KRISHNAN ELAYATH, VAZHUTHANAPPILLY ILLATH
HOUSE, ERAMALLUR P.O., CHEMMANAD, EZHUPUNNA
VILLAGE, CHERTHALA TALUK, ALAPPUZHA DISTRICT.

BY ADV. SRI.P.G.SURESH

RESPONDENT:

THE CHETTARIKKAL ENTERPRISES,
KURIES AND LOANS, P.O.KORATTY, THRISSUR DISTRICT,
REP. BY ITS MANAGING PARTNER, MRS.MOOKAMBI,
W/O.VELAYUDHAN, PADIYATH HOUSE, CHETTARIKKAL,
KORATTY, THRISSUR.

BY ADV. SRI.M.P.KRISHNAN NAIR
GOVERNMENT PLEADER SRI. SHYSON P. MANGUZHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE EXECUTION PETITION FILED AS E.P.NO.140/00 PENDING BEFORE THE SUB COURT, IRINJALAKKUDA.

EXT.P2: COPY OF THE CLAIM PETITION FILED BYTEH 2ND J.D.IN E.P.140/2000.

EXT.P3: COPY OF THE DEPOSIT RECEIPT OF RS. 3,00,000/-.

RESPONDENT' S EXHIBITS:

EXT.R1: COPY OF THE SALE AGREEMENT DTD. 16.1.1997 BETWEEN THE JUDGMENT DEBTORS 1 AND 2 IN E.P.140/2000 IN O.S.207/97 AND THE RESPONDENT HEREIN.

EXT.R2: COPY OF THE W.P.(c).26214/2003 FILED BY THE PETITIONER HEREIN BEFORE THIS HON'BLE COURT.

EXT.R3: COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENT HEREIN IN EXT.R2 WRIT PETITION.

EXT.R4: COPY OF THE JUDGMENT DTD. 24.11.2003 IN W.P.(C).NO. 26214/2003 PASSED BY THIS HON'BLE COURT.

EXT.R5: COPY OF THE ORDER DTD. 18.304 IN E.A.NO. 447/04 IN E.P.140/2000 OF THE SUB COURT, IRINJALAKKUDA.

EXT.R6: COPY OF THE W.P.(C).NO. 24380/2004 FILED BY NARAYANAN ELAYATH , JD.1 BEFORE THIS HON'BLE COURT.

EXT.R7: COPY OF THE COUNTER AFFIDAVIT DTD. 8.2.2005 FILED BY THE RESPONDENT HEREIN IN EXT.R6.

EXT.R8: COPY OF THE CHALLAN NO. 63/04 DTD. 2.7.2004 (INTERIM RECEIPT FOR REMITTANCES MADE IN TREASURIES) FILED WITH THE ADDITIONAL AFFIDAVIT DTD. 18.2.2005 FILED BY THE RESPONDENT HEREIN.

EXT.R9: COPY OF THE CHALLAN NO. 402/04 DTD. 31.7.2004 FILED ALONG WITH THE ADDITIONAL AFFIDAVIT DTD. 18.2.2005 FILED BY THE RESPONDENT HEREIN.

EXT.R10: COPY OF THE JUDGMENT DTD. 18.8.05 IN W.P.(C)24380/2004 B PASSED BY THIS HON'BLE COURT.

EXT.R11: COPY OF THE SALE CERTIFICATE, DTD. 16.5.2005 IN RESPECT OF AUCTION CONDUCTED ON 19.6.2004 AND CONFIRMED ON 11.2.2005 BY THE EXECUTION COURT.

EXT.R12: COPY OF THE DOCUMENT NO. 3172/05 DTD. 26.10.2005 OF ANNAMANADA SUB REGISTRY.

// True copy //

PIUS C. KURIAKOSE, J.

W.P.(C) NO.30560 OF 2005

Dated this the 21st day of June 2007

JUDGMENT

Sri.P.G.Suresh, the learned counsel for the petitioner, has addressed me very strenuously on the grounds raised in this writ petition. However, I am of the view that the only relief the petitioner can aspire for is some more time for settling the liability and decree in full and final. This court while admitting the writ petition imposed a condition that a sum of Rupees Three Lakhs shall be deposited within one month from 30.11.2005. Sri.Suresh submits that the above condition has been promptly complied with. I have heard the submission of Sri.M.P.Krishnan Nair the learned counsel for the respondents also.

2. Having regard to the rival submissions, I am of the view that the writ petition itself can be disposed of issuing the following directions:

i). The order of stay presently passed will remain in force till 30th September 2007. It is open to the petitioner to pay off

the entire balance decree debt in the meanwhile.

It is made clear that the petitioner will get the benefit of the above order only if the court below on verification finds that the sum of Rs.Three Lakhs has been deposited by the petitioner before 30.11.2005 as claimed before me by the learned counsel for the petitioner.

Once the petitioner becomes confident that the entire decree debt is wiped off, it is open to her to file application before the court below for recording the full satisfaction. If such application is received, the court below will hear both sides and take decision on that application.

PIUS C. KURIAKOSE,

JUDGE.

dpk

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 30560 of 2005

Dated this the 30th day of July , 2007

JUDGMENT

In this writ petition the petitioner, who filed Ext.P1 claim petition before the Execution Court, challenges an order which she claims to have been passed by the Execution Court rejecting her claim. But, Annexure A1 produced by the respondent will show that the Execution Court has not passed any order rejecting the claim petition. Reading of the order actually passed by the Execution Court on 13.2.2006 will show that much prior to the passage of stay order by this court in this writ petition, the property in question was delivered over to the respondent decree holder who had purchased the same in auction on the strength of the sale certificate issued in his favour.

2. Under the above circumstances, I do not find way to maintain the challenge against the order of rejection said to

have been passed on the claim petition.

The writ petition will stand dismissed.

PIUS C. KURIAKOSE,
JUDGE.

Dpk